

JOHN F. COOK
MAYOR



JOYCE WILSON
CITY MANAGER

CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
EMMA ACOSTA, DISTRICT 3
CARL ROBINSON, DISTRICT 4
RACHEL QUINTANA, DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

REGULAR COUNCIL MEETING MINUTES
COUNCIL CHAMBERS
December 7, 2010
8:30 A.M.

The City Council met in regular session at the above place and date. Meeting was called to order at 8:36 a.m. Mayor John F. Cook present and presiding and the following Council Members answered roll call: Ann Morgan Lilly, Emma Acosta, Carl Robinson, Rachel Quintana, Eddie Holguin, Jr., Steve Ortega, and Beto O'Rourke. Late arrivals: Susannah Byrd at 9:05 a.m. The invocation was given by, Police, Fire and CIMA Chaplain Sam Faraone, followed by the Pledge of Allegiance to the Flag of the United States of America.

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MAYOR'S PROCLAMATIONS

1. EL PASO EMPLOYEES FEDERAL CREDIT UNION HOLIDAY TREE LIGHTING AND HOLIDAY LIGHTS PARADE DAY
2. JOJO APPRECIATION DAY

CALL TO THE PUBLIC – PUBLIC COMMENT

This time is reserved for members of the public who would like to address the City Council on items that are not on the City Council Agenda.

A sign-up form is available on line at https://www.elpasotexas.gov/muni_clerk/contact_public.asp for those who wish to sign up in advance of the meeting date and a sign-up form is available outside the City Council Chambers at the City Clerk table for those who wish to sign up on the day of the meeting.

Requests to speak must be received by 9:00 a.m. on the date of the meeting.

30 Minutes total is allotted for speakers.

Three to five minutes may be allowed for each speaker.

The following members of the public commented:

1. Mr. Aaron Villalobos
2. Mr. Manny Hinojosa
3. Mr. Lynn Fitzgerald
4. Mr. Ray Bannon

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Motion made by Representative Robinson, seconded by Representative Lilly, and unanimously carried that the City Council retire into **EXECUTIVE SESSION** at 8:37 a.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.076 to discuss any of the following:

NOT PRESENT FOR THE VOTE: Representative Byrd

Section 551.071 CONSULTATION WITH ATTORNEY
 Section 551.072 DELIBERATION REGARDING REAL PROPERTY
 Section 551.073 DELIBERATION REGARDING PROSPECTIVE GIFTS
 Section 551.074 PERSONNEL MATTERS
 Section 551.076 DELIBERATION REGARDING SECURITY DEVICES
 Section 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS

Discussion and action on the Executive Session items on the Agenda:

- EX1.** Application of El Paso Electric Company to Implement Interim Fuel Refund before the Public Utility Commission of Texas, Docket No. 38802. (551.071)
- EX2.** Petition of El Paso Electric Company for authority to decrease fixed fuel factor pursuant to formula before the Public Utility Commission of Texas, PUC Docket No. 38895; SOAH Docket No. 473-11-1409. (551.071)
- EX3.** Enrique Rodriguez vs. City of El Paso; Cause No. 2009-2107 (551.071)

Motion made by Representative Lilly, seconded by Representative Quintana, and unanimously carried to adjourn the Executive Session at 9:02 a.m. and **RECONVENE** the meeting of the City Council, during which time motions were made.

NOT PRESENT FOR THE VOTE: Representatives Byrd and O'Rourke

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- EX1.** Application of El Paso Electric Company to Implement Interim Fuel Refund before the Public Utility Commission of Texas, Docket No. 38802. (551.071)

Motion made by Mayor Pro Tempore Acosta, seconded by Representative Quintana, and carried to grant the authority to the City Attorney to authorize the City Attorney to enter into a settlement on behalf of the City for the Application of El Paso Electric Company to Implement an Interim Fuel Refund before the Public Utility Commission of Texas, Docket No. 38802.

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Quintana, Holguin, Ortega, and O'Rourke
 NAYS: None

Mayor Cook commented.

Mr. Norman Gordon, outside utility counsel, gave legal advice.

Mr. Jerry Thiedt, citizen, commented.

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- EX2.** Petition of El Paso Electric Company for authority to decrease fixed fuel factor pursuant to formula before the Public Utility Commission of Texas, PUC Docket No. 38895; SOAH Docket No. 473-11-1409. (551.071)

Motion made by Mayor Pro Tempore Acosta, seconded by Representative Robinson, and carried to grant the authority to the City Attorney to file a Motion in Intervention on behalf of the City regarding the Petition of El Paso Electric Company for Authority to Decrease Fixed Fuel Factor pursuant to Formula before the Public Utility Commission of Texas, PUC Docket No. 38895; SOAH Docket No. 473-11-1409.

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Quintana, Holguin, Ortega, and O'Rourke
 NAYS: None

Mayor Cook commented.

Mr. Norman Gordon, outside utility counsel, gave legal advice.

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EX3. Enrique Rodriguez vs. City of El Paso; Cause No. 2009-2107 (551.071)

1ST MOTION

Motion made by Mayor Pro Tempore Acosta, seconded by Representative Robinson, and carried that outside counsel for the City of El Paso be authorized settlement authority, to negotiate settlement agreement and sign all documents to resolve the lawsuit styled Enrique Rodriguez vs. City of El Paso; Cause No. 2009-2107.

AYES: Representative Acosta

NAYS: Representatives Lilly, Byrd, Robinson, Quintana, Holguin, Ortega, and O'Rourke

THE MOTION FAILED.

2ND AND FINAL MOTION

Motion made by Mayor Pro Tempore Acosta, seconded by Representative Lilly, and carried that outside counsel for the City of El Paso be authorized to reject Plaintiff's settlement demand in the lawsuit styled Enrique Rodriguez vs. City of El Paso; Cause No. 2009-2107.

AYES: Representatives Lilly, Byrd, Robinson, Quintana, Holguin, Ortega, and O'Rourke

NAYS: Representative Acosta

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CONSENT AGENDA

Motion made by Mayor Pro Tempore Acosta, seconded by Representative Quintana, and unanimously carried to **APPROVE, AS REVISED**, all matters listed under the Consent Agenda unless otherwise noted. (Items approved, postponed, or deleted pursuant to the vote on the Consent Agenda will be shown with an asterisk {*}).

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Quintana, Holguin, Ortega and O'Rourke

NAYS: None

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1. APPROVAL OF MINUTES

*Motion made, seconded, and unanimously carried to **APPROVE** the Minutes for the Regular City Council Meeting of November 30, 2010.

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2. REQUEST TO EXCUSE CITY COUNCIL MEMBERS

NO ACTION was taken on this item.

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3A.

***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Third Amendment to the Industrial Site Lease by and between the City of El Paso and LFCW, LLC, which allows a Valet Automobile Parking Lot to be a permitted use until Dec. 25, 2011 for the following described property:

Lots 2, 3 and 4, Block 1A, El Paso International Airport Tracts, Replat of Unit 4, City of El Paso, El Paso County, Texas, commonly known and numbered as 6440 Airport Road, El Paso, Texas.

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3B.

***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign and accept on behalf of the City, an Easement granting to the City a drainage easement and temporary construction easement from Butterfield Trails Apartments Partnership. The drainage easement area is approximately .1907 acre in size, located within a portion of Lot 16, Block 74, Sun Valley Addition Unit Seven, City of El Paso, El Paso County, Texas, and being more fully described by metes and bounds in Exhibit "A" and "A-1" of the Easement.

Mayor Cook and Representative Robinson commented.

Ms. Joyce Wilson, City Manager, and Mr. Sam Rodriguez, Engineering Division Manager, commented.

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3C.

***RESOLUTION**

WHEREAS, the City of El Paso has purchased 0.10 acres of unimproved property more fully identified in Exhibit "A", attached hereto and made a part hereof for all purposes; and

WHEREAS, a park at 1030 Myrtle Avenue would provide additional outdoor recreation opportunities for the citizens of El Paso; and

WHEREAS, the City staff recommends that the 0.10 acres of land identified in Exhibit "A" be dedicated as parkland.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City of El Paso confirms the dedication of the approximately 0.10 acres of land identified in Exhibit "A" as parkland.

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3D. MUNICIPAL CLERK

*Motion made, seconded, and unanimously carried to **RESCHEDULE** the City Council meeting of Tuesday, January 4, 2011 to Thursday, January 6, 2011 due to the lack of a quorum for January 4, 2011.

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4. BOARD RE-APPOINTMENT

*Motion made, seconded, and unanimously carried to **RE-APPOINT** Jim Booher to the Historic Landmark Commission by Representative Beto O'Rourke, District 8.

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5. BOARD APPOINTMENT

*Motion made, seconded, and unanimously carried to **APPOINT** Laura Calvillo Neill to the Community Development Steering Committee by Representative Susie Byrd, District 2.

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6. APPLICATIONS FOR TAX REFUNDS

*Motion made, seconded, and carried that the following tax refunds be **APPROVED**, subject to auditor approval:

- A. Members Trust Company, FSB in the amount of \$5,933.83 overpayment of 2009 taxes. (PID #S812-999-0080-0400).
- B. Corelogic c/o GMAC Mortgage in the amount of \$4,428.12 overpayment of 2009 taxes. (PID #T287-999-0820-4500).
- C. Joseph B. Furlong in the amount of \$25,672.87 overpayment of 2010 taxes. (PID #U819-999-002B-1770).
- D. Chase Home Finance in the amount of \$3,377.40 overpayment of 2009 taxes. (PID #W144-999-0120-0600).
- E. River Oaks Properties, Ltd. in the amount of \$4,283.06 overpayment of 2009 taxes. (PID #X011-999-000A-0100).
- F. Atocha Mayra Ramirez in the amount of \$3,441.51 overpayment of 2009 taxes. (PID #T287-999-1060-0400).
- G. Charles E. & Lucia Rohrer in the amount of \$3,942.06 overpayment of 2009 taxes. (PID #S812-999-0160-0300).

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7. BID

*Motion made, seconded, and unanimously carried to **AWARD** Solicitation No. 2010-279, for the Chuck Heinrich Park Irrigation Project to Accent Landscape Contractors, Inc., for a total amount of \$375,575.46.

Department: Engineering and Construction Management
Award to: Accent Landscape Contractors, Inc.
Base Bid: \$375,575.46
Total Estimated Completion: \$375,575.46
Funding Source: Turf Management & 2008 Reprogramming & El Paso Water Utility

It is requested that the City Manager of the City of El Paso be authorized to sign any contracts or other documents required to effectuate this award.

Work under this unit price contract is only an estimated value and will be ordered, performed, invoiced, and paid by measured quantity. The actual cost of this contract may be higher or lower than the total estimated value and will be the sum total of unit prices at the end of the contract term.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

This is a low bid, unit-price contract. The Engineering and Construction Management and Parks Departments recommend award as indicated to the lowest responsible bidder.

Representative Ortega commented.

Mr. Javier Reyes, Engineering Division Manager, commented.

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8.

ORDINANCE 17466

The City Clerk read an Ordinance entitled: **AN ORDINANCE ADDING A NEW SECTION TO TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.80 (MISCELLANEOUS TRAFFIC REGULATIONS) OF THE CITY CODE RELATING TO RESTRICTIONS ON OPERATING A MOTOR VEHICLE NEAR VULNERABLE ROAD USERS; THE PENALTY BEING AS PROVIDED IN SECTION 12.84.010 OF THE EL PASO CITY CODE.**

Mr. Ted Marquez, Deputy Director of Transportation, presented a PowerPoint presentation (copy on file in City Clerk's office).

Representatives O'Rourke, Acosta, Robinson, Quintana and Ortega commented.

The following City staff members commented:

- 1. Mr. Charlie McNabb, City Attorney, gave legal advice.
- 2. Ms. Julie Lozano, Public Information Officer
- 3. Assistant Police Chief Robert Feidner

The following members of the public commented.

- 1. Mr. Jerry Thiedt
- 2. Mr. Richard Schecter
- 3. Mr. David Briseno
- 4. Mr. Steven Silver
- 5. Mr. Mike Rooney, e-mail, was read into the record

1ST MOTION

Motion made by Representative Quintana, seconded by Representative Lilly, and unanimously carried to **SUSPEND THE RULES OF ORDER** to allow additional speakers after the sign-up period.

2ND AND FINAL MOTION

Motion duly made by Representative O'Rourke, seconded by Mayor Pro Tempore Acosta, that the Ordinance be **ADOPTED AS REVISED**, with an effective date of March 1, 2011. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Lilly, Byrd, Acosta, Quintana, Holguin, Ortega and O'Rourke
NAYS: Representative Robinson

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same are hereby **ADOPTED AS REVISED**.

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9.

ORDINANCE 17467

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING ORDINANCE NO. 017413 AND TITLE 18 (BUILDING AND CONSTRUCTION), CHAPTER 18.02 (BUILDING AND CONSTRUCTION ADMINISTRATIVE CODE), SECTION 18.02.103.9.5.3. (SIGNS), OF THE EL PASO CITY CODE, RELATING TO THE INSPECTION REQUIREMENTS FOR SIGNS, THE PENALTY BEING AS PROVIDED IN SECTION 18.02.107 (VIOLATIONS AND PENALTIES) OF THE EL PASO CITY CODE.**

Mr. Victor Morrison-Vega, Deputy Director of Engineering and Construction Management, commented.

Motion duly made by Representative Byrd, seconded by Representative Lilly, that the Ordinance be **ADOPTED**. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Holguin, Ortega and O'Rourke
NAYS: None
NOT PRESENT FOR THE VOTE: Representative Quintana

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same are hereby **ADOPTED**.

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ITEMS TAKEN TOGETHER

10A.

ORDINANCE 17468

The City Clerk read an Ordinance entitled: **AN ORDINANCE VACATING A DRAINAGE EASEMENT MEASURING 25 FEET IN WIDTH, LOCATED WITHIN A PORTION OF LOT 16, BLOCK 74, SUN VALLEY ADDITION # 7, CITY OF EL PASO, EL PASO COUNTY, TEXAS. SUB10-00244**

10B.

ORDINANCE 17469

The City Clerk read an Ordinance entitled: **AN ORDINANCE VACATING AN ACCESS EASEMENT MEASURING 20 FEET IN WIDTH, LOCATED WITHIN A PORTION OF LOT 16, BLOCK 74, SUN VALLEY ADDITION #7, CITY OF EL PASO, EL PASO COUNTY, TEXAS. SUB10-00245**

Mr. Sam Rodriguez, Engineering Division Manager, commented.

Motion duly made by Representative Robinson, seconded by Representative Lilly, that the Ordinance be **ADOPTED**. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Lilly, Acosta, Robinson, Holguin, Ortega and O'Rourke
NAYS: None
NOT PRESENT FOR THE VOTE: Representatives Byrd and Quintana

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same are hereby **ADOPTED**.

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10C. PLANNING AND ECONOMIC DEVELOPMENT

*Motion made, seconded, and unanimously carried to **DELETE** the public hearing on an Ordinance vacating a service road easement measuring 35 feet by 45 feet, located within a portion of Lot 16, Block 74, Sun Valley Addition #7, City of El Paso, El Paso County, Texas. SUB10-00246

Ms. Joyce Wilson, City Manager, and Mr. Sam Rodriguez, Engineering Division Manager, commented.

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10D. PLANNING AND ECONOMIC DEVELOPMENT

*Motion made, seconded, and unanimously carried to **POSTPONE** four weeks the public hearing on an Ordinance granting Special Permit No. ZON10-00084, to allow for infill development on the property described as Lots 13-20, and the west 75.75 feet of the south 2 feet of Lot 11 and the west 75.75 feet of Lot 12, Block 135 Campbell Addition, City of El Paso, El Paso County, Texas, pursuant to Section 20.04.320 of the El Paso City Code. The penalty being as provided for in Chapter 20.24 of the El Paso City Code.

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10E.

ORDINANCE 17470

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF LOTS 11 TO 20, BLOCK 59, MAGOFFIN ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS, BE CHANGED FROM A-3 (APARTMENT) TO A-3/H (APARTMENT/HISTORIC). THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.**

Ms. Providencia Velazquez, Historic Preservation Officer, commented.

Motion duly made by Representative O'Rourke, seconded by Representative Byrd, that the Ordinance be **ADOPTED**. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Lilly, Byrd, Acosta, Quintana, Holguin, Ortega and O'Rourke

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Robinson

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same are hereby **ADOPTED**.

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11A. MAYOR AND COUNCIL

Motion made by Representative Ortega, seconded by Representative O'Rourke, and carried to **CO-SPONSOR** the El Paso Marathon, to cover a defined shortfall up to \$25,000, based upon their reporting of their revenues and expenses with the shortfall to come from Hotel Occupancy Tax or from Contingency, to help cover the municipal costs associated with the event.

AYES: Representatives Lilly, Byrd, Quintana, Ortega, and O'Rourke

NAYS: Representatives Acosta, Robinson, and Holguin

Mayor Cook and Representatives Byrd, Acosta, Robinson, Quintana, Holguin, Ortega, and O'Rourke commented.

Ms. Joyce Wilson, City Manager, commented and Mr. Charlie McNabb, City Attorney, gave legal advice.

Mr. Mike Coulter, El Paso Marathon organizer, commented.

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11B. MAYOR AND COUNCIL

Discussion and action on El Paso MHMR Quarterly Report - El Paso MHMR City-appointed Board Members will present overview and updates from local Mental Health/Mental Retardation Authority.

Mayor Cook and Representative Acosta commented.

The following Board of Trustees members commented.

1. Mr. Xavier Banales
2. Ms. Virginia Alonzo
3. Dr. Sandra Lloyd

NO ACTION was taken on this item.

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11C. MAYOR AND COUNCIL

Motion made by Representative Quintana, seconded by Representative Robinson, and unanimously carried to **ALLOW** the City Attorney to work with the Mayor and Council members on amending Ordinance number 017456.

Mayor Cook and Representatives Lilly, Byrd, Acosta, Quintana, Holguin, Ortega, and O'Rourke commented.

Mr. Charlie McNabb, City Attorney, gave legal advice.

The following members of the public commented:

1. Mr. David Marcus
2. Ms Jeryl Marcus
3. Mr. Ronald Webster
4. Ms. Elizabeth Branham
5. Mr. Jerry Thiedt
6. Mr. Ron Martin

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11D. MAYOR AND COUNCIL

Legislative Review Committee Report

- 1) For notation only: Formal report of the Environmental Services Legislative Review Committee meeting held on November 8, 2010, as submitted by Representative Susie Byrd; and,
- 2) Discussion pertaining specifically to the agenda items posted by the Environmental Services Legislative Review meeting as follows:
 - A. Discussion and update regarding a staff report on ozone air quality standards and attainment status.
 - B. Discussion and update regarding a staff report on PM-10 air quality standards and attainment status.

- C. Discussion regarding a staff report on the City’s carbon footprint (or baseline inventory of greenhouse gas emissions).

Representative Byrd commented.

Ms. Ellen Smyth, Environmental Services Director, commented.

NO ACTION was taken on this item

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12.

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Economic Development Grant Agreement by and between the City of El Paso (“City”) and the El Paso Community Foundation (“Community Foundation”) for the development of a nonprofit project to be located in downtown El Paso in association with Artspace Projects, Inc.

Ms. Kathryn Dodson, Planning and Economic Development Director, presented a PowerPoint presentation (copy on file in City Clerk’s office).

Mayor Cook and Representatives Acosta, Robinson, Quintana, Holguin, and Ortega commented.

Ms. Joyce Wilson, City Manager, commented and Ms. Sylvia Firth, Senior Assistant City Attorney/Intergovernmental Affairs, gave legal advice.

Mr. Eric Pearson, Vice President of El Paso Community Foundation, commented.

Motion made by Representative Byrd, seconded by Representative Lilly, and unanimously carried to **APPROVE AS REVISED** the Resolution.

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Quintana, Holguin, Ortega and O’Rourke
NAYS: None

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ITEMS TAKEN TOGETHER

13A.

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an “Agreement to Contribute Funds – Local Government” between the City of El Paso (“City”) and the State of Texas, acting by and through the Texas Department of Transportation (“State”). The scope of work for this Agreement is described as the acquisition of right of way and adjustment of utilities for a highway project on Highway No. Loop 375 from 0.61 Mi. NE of Loop 375 (on F.M. 659) to 0.63 Mi. S of F.M. 659 (on Loop 375). The City’s share is 4.8% of the total costs of the property acquisition. The initial estimate of the City’s share is \$274,950.00.

13B.

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an "Agreement to Contribute Funds – Local Government" between the City of El Paso ("City") and the State of Texas, acting by and through the Texas Department of Transportation ("State"). The scope of work for this Agreement is described as the acquisition of right of way and adjustment of utilities for a highway project on Highway No. Loop 375 from U.S. 54 (Patriot Freeway) to BU 54 (Dyer Street). The City's share is 4.8% of the total costs of the property acquisition. The initial estimate of the City's share is \$75,331.00.

Mayor Cook and Representatives Byrd, Acosta, Robinson, Ortega, and O'Rourke commented.

Ms. Joyce Wilson, City Manager, and Ms. Terry Quezada, Deputy Director of Transportation, commented.

Motion made by Representative Robinson, seconded by Representative Lilly, and carried to **APPROVE** the Resolutions.

AYES: Representatives Lilly, Acosta, Robinson, Quintana, Holguin, Ortega and O'Rourke

NAYS: Representative Byrd

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Motion made by Representative Robinson, seconded by Representative Lilly, and unanimously carried to **ADJOURN** this meeting at 12:51 p.m.
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APPROVED AS TO CONTENT:

Richarda Duffy Momsen, City Clerk